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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,483	11/28/2001	Woodrow W. Pearce	45955/CM/P369	2251

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT PAPER NUMBER

3727

DATE MAILED: 08/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/995,483	Applicant(s) PEARCE, WOODROW W.	
	Examiner Robin A. Hylton	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 18 March 2005.
- 2a)  This action is FINAL.                      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1,3-42,48,49,57 and 82-113 is/are pending in the application.  
4a) Of the above claim(s) 96-113 is/are withdrawn from consideration.
- 5)  Claim(s) 1,3-42 and 57 is/are allowed.
- 6)  Claim(s) 48,49 and 82-95 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \*    c)  None of:
1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5)  Notice of Informal Patent Application (PTO-152)
- 6)  Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Election/Restrictions***

1. Newly submitted claims 96-113 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the original patent claims are not drawn to a insert having interconnected vent slots

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 96-113 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "a non-linear path".

### ***Claim Rejections - 35 USC § 112***

3. Claims 84-95 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the disclosure as originally filed for a "non-linear gas path" or a non-linear gas path extending beyond two locations external of the rim".

4. Claims 85,88, and 91 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 85 contains redundant claim limitation with respect to the cap capping the bottle.

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Wherein the first gas path is set forth in claim 87 as being between the neck and cap wall, it is unclear how the first gas path extends to the opening as set forth in claim 88.

Since two inner surfaces have been set forth in claim 87, which "inner surface" does the first surface face in claim 91?

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 48 is rejected under 35 U.S.C. 102(b) as being anticipated by Ford (US 1,724,346).

Insert 10 having an opening 12 through the insert and a groove 17 meets the structural limitations of the claims and are capable of functioning as claimed.

7. Claims 48 and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Rooney (US 3,312,376).

Insert 10 having an opening 11 through the insert and a groove 13 meets the structural limitations of the claims and are capable of functioning as claimed.

8. Claims 48 and 82 are rejected under 35 U.S.C. 102(b) as being anticipated by Hodges et al. (US 2,790,570).

Disclosed are bottle 11, cap 13, and insert 16 having a groove 21 extending beyond two locations external of the bottle rim.

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**Claim Rejections - 35 USC § 103**

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ford.

Ford teaches the claimed insert except for the insert being formed of plastic.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the insert of plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Doing so allows provides a more resilient insert and a more flexible sealing arrangement.

11. Claims 49 and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hodges.

Hodges teaches the claimed insert except for the insert being formed of plastic.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the insert of plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Doing so allows provides a more resilient insert and a more flexible sealing arrangement.

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12. Claims 84-86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rooney.

Rooney teaches the claimed cap system except for the non-linear shape of the gas path of the insert.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the gas path of a non-linear shape since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

13. Claims 84-91,94, and 95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hodges.

Hodges teaches the claimed cap system except for the non-linear shape of the gas path of the insert.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the gas path of a non-linear shape since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

Regarding claims 89 and 90, each of the grooves **21** is considered a gas path, i.e. a second and a third gas path.

Regarding claims 92 and 93, (interrupted) groove **21** is a second gas path extending "beyond two locations external of the rim".

***Allowable Subject Matter***

14. Claims 1,3-42, and 57 are allowed.

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***Conclusion***

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

16. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

17. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice

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may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

18. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). ). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

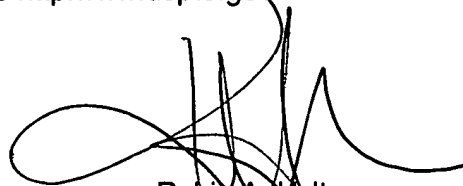


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Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

RAH

A handwritten signature in black ink, appearing to read 'Robin A. Mylton', with a large, stylized flourish extending to the left.

Robin A. Mylton  
Primary Examiner  
GAU 3727